UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2001/85
6 February 2001

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 15 of the provisional agenda

INDIGENOUS ISSUES

Report of the working group established in accordance with Commission on Human Rights resolution 1995/32

Chairperson-Rapporteur: Mr. Luis-Enrique Chávez (Peru)

1. By resolution 1995/32 of 3 March 1995, the Commission on Human Rights decided to establish an open-ended inter-sessional working group of the Commission on Human Rights with the sole purpose of elaborating a draft declaration, considering the draft contained in the annex to resolution 1994/45 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Promotion and Protection of Human Rights) entitled "Draft United Nations declaration on the rights of indigenous peoples" for consideration and adoption by the General Assembly within the International Decade of the World's Indigenous People. This decision was endorsed by the Economic and Social Council in its resolution 1995/32 of 25 July 1995.

2. The working group held eight formal meetings and eight informal plenary meetings during the period 20 November - 1 December 2000. A total of 365 people attended the meetings of the working group, including representatives of 48 Governments and 62 indigenous and no-governmental organizations.

3. The present report contains a record of the general debate. The debate which took place in the informal plenary meetings is reflected in the summaries of the Chairperson-Rapporteur.

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4. This report is solely a record of the debate and does not imply acceptance of the usage of either the expression "indigenous peoples" or "indigenous people" by all Governments. In this report both terms are used without prejudice to the positions of particular delegations, where divergence of approach remains.

5. It is noted by indigenous representatives that all indigenous representatives and some Governments could accept the expression "indigenous peoples" as used in the current text of the draft declaration.

Opening of the session

6. The working group was opened by the Deputy High Commissioner for Human Rights, Mr. Bertrand Ramcharan. He referred to the recommendations contained in numerous resolutions of the General Assembly and the Commission on Human Rights requesting that the declaration be adopted by the end of the International Decade of the World's Indigenous People in 2004. He said that the time was rapidly approaching for delegates, both State and indigenous, to move towards resolution of some of the difficult issues. An indefinite stalemate would erode confidence on both sides and reduce the likelihood of completing this important task before the end of the Decade. He encouraged indigenous and governmental delegates to meet and discuss together at every opportunity. He stated that all negotiations at the United Nations depended upon flexibility, the willingness of all sides to listen to the views of others and to consider and accommodate positions and proposals that might not necessarily be their first choice.

7. At its first meeting, the working group elected by acclamation Mr. Luis-Enrique Chávez (Peru) as its Chairperson-Rapporteur.

Documentation

8. The working group had before it the following documents:

Provisional agenda (E/CN.4/2000/WG.15/1);

Draft report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 (E/CN.4/2000/WG.15/CRP.1 to 4);

Provisional list of participants (E/CN.4/2000/WG.15/INF.1).

9. The following background documents were made available to the working group:

Technical review of the draft United Nations declaration on the rights of indigenous peoples: note by the Secretariat (E/CN.4/Sub.2/1994/2);

Draft United Nations declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1994/2/Add.1);

Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its fifth session (E/CN.4/2000/84).

Participation

10. The following States members of the Commission on Human Rights were represented: Argentina, Bangladesh, Brazil, Canada, Chile, China, Colombia, Cuba, Ecuador, France, Germany, Guatemala, India, Indonesia, Japan, Latvia, Mauritius, Mexico, Morocco, Nepal, Norway, Pakistan, Peru, Philippines, Russian Federation, Spain, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

11. The following States Members of the United Nations were represented by observers: Australia, Belarus, Costa Rica, Denmark, Egypt, Estonia, Finland, Malaysia, New Zealand, Panama, South Africa, Sweden, Togo, Ukraine, Uruguay.

12. The following non-member States were represented by observers: Holy See, Switzerland.

13. The following specialized agencies and intergovernmental organizations were represented by observers: United Nations Institute for Training and Research (UNITAR), International Labour Organization (ILO), World Bank.

14. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers:

Aboriginal and Torres Strait Islander Commission (ATSIC), African Association of Health and Human Rights Promoters (ACHHHRP), Agencia Latinoamericana de Información (ALAI), Asian Buddhists Conference for Peace, Asociación Kunas Unidos por Napguana, Association of World Citizens, Commission of the Churches on International Affairs of the World Council of Churches, Friends World Committee for Consultations (Quakers), Grand Council of the Crees (EENOU ASTCHEE), Indian Council of South America (CISA), Indigenous World Association, Indian Law Resource Centre, Indian Movement "Tupaj Amaru", Interfaith International, International Club for Peace Research (ICPR), International Indian Treaty Council, International Movement against all Forms of Discrimination and Racism (IMADR), International Organization for the Development of Freedom of Education (OIDEL), International Organization of Indigenous Resource Development, International Peace Bureau, International Treaty Four Secretariat, International Work Group for Indigenous Affairs (IWGIA), International Young Catholic Students, Inuit Circumpolar Conference, Juridical Commission for Auto-Development of First Andean Peoples, Latin American Human Rights Association (ALDHU), Metis National Council, Minority Rights Group, National Aboriginal and Torres Strait Islander Legal Services Secretariat, National Indian Youth Council, Rights and Democracy, Saami Council, Society for Threatened Peoples, Shimin Gaikou Centre, South Asia Human Rights Documentation Centre, World Wide Fund for Nature International (WWF).

15. The following organizations of indigenous people accredited in accordance with Commission on Human Rights resolution 1995/32 were represented by observers: Ainu Association of Hokkaido, Ainu Association of Sapporo, American Indian Law Alliance,

Ancap-Tamaynut, Assembly of First Nations, Association of the Shor People, Black Hills Teton Sioux Nation, Catwaba Indian Nation, Consejo de Todas las Tierras, Ermineskin Cree Nation, Fédération des organisations amér-indiennes de Guyane, Finno-Ugric People, Indigenous Woman Aboriginal Corporation, International Alliance of the Indigenous and Tribal Peoples of the Tropical Forests, Maori Legal Service, Mejlis of Crimean Tartar People, Mohawk Nation Council of Chiefs, Navajo Nation, Navajo Working Group for Human Rights, Na Koa Ikaika o Ka Lahui Hawai, Nepal Indigenous Peoples Development and Information Service Centre (NIPDISC), Organization for the Indigenous Peoples of Africa (OIPA), Panlipi, Russian Association of the Indigenous Peoples of the North, Samson Cree Nation, Sovereign Union of Aboriginal Peoples in Australia.

Organization of work

16. In his opening statement, at the first meeting, the Chairperson-Rapporteur thanked the participants for nominating him. He gave a brief summary of the consultations he had had with representatives of Governments and of indigenous organizations on the organization of work. He said that in general terms there was broad agreement on the plan of work. There was agreement on having a general debate in formal session on the different aspects of the process in which the working group was involved. This would be followed by a general debate on substantive aspects of the draft declaration, such as self-determination, land rights and natural resources. There was also general concurrence that during the current session the working group should focus on articles 1, 2, 12, 13, 14, 44 and 45.

17. At the second meeting the provisional agenda (E/CN.4/2000/WG.15/1) was adopted.

18. At the eighth meeting the present report was adopted by the working group.

General debate

(a) Process

19. There was a general agreement among participants that the elaboration of the draft declaration was of importance for all. Many indigenous and governmental representatives noted that the process of elaborating the draft declaration had been slow and that it was important to agree on a methodology to speed up the process. Several representatives urged the adoption of the declaration within the framework of the International Decade of the World's Indigenous People before the year 2004.

20. A representative of African indigenous peoples regretted the limited representation of African Governments at the meeting, calling it a clear manifestation of their lack of concern and commitment to the marginalized indigenous peoples in that region. It was felt that contributions from indigenous peoples of Africa such as Maasai, Hadzabe, Barabaig, Fulani, Pygmies and Berbers were considered to be irrelevant at the national level.

21. The representative of Switzerland asked for the rapid adoption of the declaration and its broad dissemination. The substance of the declaration should not be weakened, as it would be an important foundation for the work of the Permanent Forum.

22. Many indigenous representatives highlighted the importance of transparency. They acknowledged that Governments might need private discussion. However, these should not take place behind closed doors without indigenous participation, nor should these meetings take place during the authorized meeting time.

23. An indigenous representative speaking on behalf of the Indian Law Resource Centre, the Assembly of First Nations, the International Treaty Four Secretariat, the Navajo Nation, Haudenosaunee, the International Organization of Indigenous Resource Development, NaKoa Ikaika, the American Indian Law Alliance and the Grand Council of the Crees surveyed the developments concerning human rights bodies and the obligations of States to promote and protect human rights. She asserted that it was not within the mandate or competence of the working group to engage in a process that would undermine the status of indigenous peoples as "peoples" or the indigenous right to self-determination. She requested that the Chair disallow any proposals by participants in the working group that were outside its mandate. In that regard, specific reference was made to the present positions of States that violated the principles of the United Nations in respect to democracy, equality and non-discrimination and other fundamental human rights. Furthermore, the United Nations was not free to determine that indigenous peoples are not "peoples" with the right to self-determination, based on indigenous identity or origin or any other discriminatory grounds. She appealed to Member States and the United Nations to uphold their own norms and principles of equality, non-discrimination and the prohibition of racial discrimination with respect to indigenous peoples. She also requested that the working group follow the practice of the human rights treaty bodies which, in her understanding, had consistently recognized the concept of indigenous peoples as peoples with the right to self-determination.

24. The representative of Canada explained that the purpose of the closed sessions was to bring governmental positions closer together so that indigenous peoples would not be faced with a wide variety of proposals.

25. The representative of New Zealand underlined the importance of open, transparent and inclusive deliberations in order to build mutual confidence, and called upon all participants to participate constructively in order to make tangible progress. Separate sessions should not, of course, take up official time but should be held if required.

26. An indigenous representative of the Indian Council of South America said that indigenous representatives were discussing the draft declaration on the rights of indigenous peoples in accordance with the mandate in Commission resolution 1995/32. States were moving away from that mandate by trying to restrict the discussion to internal matters such as national constitutions, territorial integrity, national legislation and the danger of the disintegration of States. He noted that Governments said that they would try to be flexible and constructive, but their presentation of alternative texts appeared to contract this.

27. The representative of Denmark suggested that indigenous representatives could be invited to be present when Governments discussed articles in a separate room in order to make the process more transparent. Some government delegations supported this proposal.

28. The indigenous peoples' caucus proposed that an indigenous co-Chair for the meeting be appointed in order to facilitate the dialogue. Mr. Wilton Littlechild of the International Organization of Indigenous Resource Development was nominated by consensus of the indigenous caucus. Many governmental delegations said that they would not envisage drafting a declaration without the support of indigenous people.

29. In a joint statement by the Saami Council and the Inuit Circumpolar Conference, an indigenous representative stressed that consensus should be in accordance with standard United Nations practice. He referred to Economic and Social Council resolution 1835 (LVI) of 14 May 1974 which defines consensus as general agreement without a vote, but not necessarily agreed by everyone. He referred to a United Nations legal opinion stating that "in United Nations organs, the term 'consensus' is used to describe a practice under which every effort is made to achieve unanimous agreement; but if that could not be done, those dissenting from the general trend were prepared simply to make their position or reservations known and placed on the record" (ST/LEG/SER.C/12/1974). He claimed that if the working group were to apply the normal United Nations practice of consensus, many of the articles which had been discussed would already have been adopted by consensus.

30. Some indigenous representatives proposed that the working group introduce a voting system.

31. An indigenous representative from the Aboriginal and Torres Strait Islander Commission suggested that in order to facilitate progress, those States that dissented from the general trend could be invited to note their reservations, but should not block the consensus needed to move forward with the adoption of particular provisions of the declaration.

32. Many indigenous representatives underlined the importance of full and equal participation in the working group. An indigenous representative, on behalf of nine indigenous nations and NGOs and many of the members of the indigenous caucus, stated that indigenous participation should include the direct and equal involvement of indigenous peoples in the development of the agenda, the programme of work, and the drafting and adoption of the working group's report.

33. An indigenous representative from the Maori Legal Service, in a joint statement with Ka Lahui Hawai'i, suggested that speakers be granted the right of reply to allow continuity in the discussion. Her delegation was opposed to closed meetings and that it was necessary for transparency for Governments to state clearly their position in the plenary. That was the only way that indigenous representatives could respond to the concerns that Governments might have.

34. An indigenous representative from Guatemala asked for a change in the accreditation procedures to allow more indigenous representatives to participate in the deliberations of the group. He said that the process to obtain consultative status was long and indigenous organizations that were accredited to other organizations would like to be identified in the report of the working group.

35. Indigenous representatives stressed that the text of the draft declaration had been developed and endorsed by the members of the Working Group on Indigenous Populations and subsequently endorsed by the members of the Sub-Commission on the Promotion and Protection of Human Rights, who are all international human rights experts elected by the parent body of the working group, the Commission on Human Rights. Indigenous peoples' and States' delegations had participated fully in the drafting process at the Working Group on Indigenous Populations and that text was the basis for discussion at the inter-sessional working group.

36. An indigenous representative from the International Indian Treaty Council reiterated his organization's strong opposition to using as a basis for discussion of specific articles anything other than the original text of the draft declaration, as approved by the Sub-Commission. She emphasized that the accepted procedure for the working group since its inception under Commission resolution 1995/32 had been to consider the original text as the basis for all work and discussions addressing the declaration's underlying principles as well as the specific content of the articles. Many indigenous representatives also stated that their comments on individual articles under discussion would be made on the basis of the wording, intent and integrity of the original text taken as a whole. They requested that government delegates also uphold this principle in all work and discussions undertaken during the present session.

37. Indigenous representatives supported the original wording of the draft declaration, and said they believed that the text was in conformity with international law. They urged Governments who proposed alternative texts, to justify their changes with the corresponding background documentation to ensure that the changes were not contrary to existing international standards.

38. Several indigenous representatives said that they could consider discussing changes to the draft declaration but only if the integrity of the original text were maintained. Furthermore, Governments suggesting changes should ensure that their proposals were reasonable, necessary, and improved and strengthened the text. Any change should conform to the principles of equality, non-discrimination and the absolute prohibition of racial discrimination.

39. Some indigenous representatives also emphasized that any proposed changes should not alter core principles, such as self-determination, land rights, and the unqualified use of the term "peoples". In their view these core principles are already recognized in several international legal instruments. For example, the principle of self-determination has been recognized in the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

40. An indigenous representative speaking on behalf of the Indian Law Resource Centre, the Assembly of First Nations, the International Treaty Four Secretariat and the Grand Council of the Crees emphasized that the 1993 Vienna Declaration and Programme confirmed that "all human rights are universal, indivisible, interdependent, and interrelated". Therefore, the United Nations and States are not free to recognize solely one portion of the right of self-determination in respect to indigenous peoples.

41. Several indigenous people remarked that the draft declaration on the rights of indigenous peoples was aimed at protecting not only individual but also collective rights.

42. An indigenous representative of the Indian Council of South America said that the indigenous representatives were discussing the draft declaration on the basis of the mandate set out in Commission resolution 1995/32. References by States to constitutional provisions, territorial integrity, the danger of secession and national law moved the group away from its mandate.

43. The Representative of the Russian Federation stressed the interest of his Government in the draft declaration and underlined the importance of the partnership between Governments and indigenous people in working on the draft declaration. It was necessary to hold informal consultations as the current text of the draft declaration was not acceptable to most Governments. There were certain procedures governing the functioning of the working group and the status of the participants which could not be changed by the participants. With respect to the way to proceed, he suggested starting work on the easier articles and holding a general discussion on the more difficult notions and concepts of the draft declaration.

44. The representative of Australia said that substantive discussion of each article was necessary to reach agreement on text and significant changes needed to be made in order to arrive at a document which could go forward for adoption.

45. An indigenous representative from the Indian Law Resource Centre pointed out that the working group should be guided by General Assembly resolution 54/174 of 17 December 1999 which reaffirmed that "the promotion, protection and full realization of all human rights and fundamental freedoms, as a legitimate concern of the world community, should be guided by the principles of non-selectivity, impartiality and objectivity and should not be used for political ends".

46. Several indigenous representatives asked Governments to identify clearly their positions with regard to certain articles in order to discuss the problems in a transparent manner.

47. There was some discussion on the strategy to be adopted. While some participants suggested working first on articles which, for them, are central to the discussion, such as self-determination, land rights and natural resources, others proposed starting with those articles which are less controversial to speed up the process.

48. The representative of China, with reference to the issue of the "definition" of indigenous people and the scope of application of the draft declaration, expressed the following position: the "definition" and scope of application are important component parts of the draft declaration and constitute the basis of its enforcement. They are vital to the draft declaration. He expressed the hope that the problems could be discussed as soon as possible by the working group and a solution could be found which would be acceptable to all. In the meantime, his delegation was willing to respect the working methods proposed by the Chairman, namely, to discuss and build consensus on the easier articles and to defer difficult issues to a later stage, when the "definition" of indigenous people could also be discussed.

49. An indigenous representative from Guatemala suggested holding informal regional consultations between Governments and indigenous people as a way of clarifying positions. The

observer for Denmark later repeated this suggestion and proposed to invite independent experts or to organize a seminar for next year's working group in order to help to clarify concepts and facilitate the negotiation process.

50. The representative of Cuba suggested dedicating more time to common informal sessions. He stressed that the working group's efforts should not result in a text that would be unacceptable to the majority of indigenous representatives. The resulting text should not maintain the status quo, in view of the fact that in many countries where indigenous peoples live there is no legislation that promotes and protects their rights and discriminatory policies, practices and laws often exist.

51. The Chairman-Rapporteur noted that, based on what he had heard, there appeared to be some misunderstanding about different aspects of the process which, he would attempt to clarify. In the first place, the working group was established by the Commission on Human Rights to elaborate a declaration, taking as a basis the text adopted by the Sub-Commission on the Promotion and Protection of Human Rights. At previous sessions some delegations had proposed alternative texts to some articles of the draft declaration. Those would be discussed in the future, but at present the only basis for discussion was the aforementioned draft.

52. Another misperception was that private sessions were being held at which indigenous representatives could not participate. He strongly stressed that so-called "closed sessions" only described private meetings of governmental delegations that, having started before the beginning of a meeting of the working group, continued during the time normally allocated to plenary sessions. He said that he would make every effort to avoid a repetition of that situation. Nevertheless, he also stressed that he would suspend the meeting whenever he deemed necessary to allow consultations among all participants, both indigenous representatives and governmental delegations. Finally, he also stressed that under his chairmanship, as under that of the previous Chairman, no group had been excluded and no group would be excluded from the process.

53. The Chairman referred to paragraph 114 of the report of the 1999 session (E/CN.4/2000/84) which explained why alternative texts were included in the report. He reaffirmed his conviction that this procedure was useful and necessary and he encouraged governmental delegations to continue their efforts to reduce their differences. The alternative texts did not represent any redrafting process, but were proposals for discussion purposes only.

54. The Chairperson-Rapporteur referred to the concept of consensus within the United Nations system. He saw no contradiction between the practice followed by the working group on this question and Council resolution 1835 (LVI). Consensus only meant that a resolution or text could be adopted without a vote. Voting, he explained, is contrary to consensus. He stressed that he would not consider that there was consensus until a text could be adopted without a vote. This was a long-standing practice of the United Nations and the working group was not mandated to change the rules. While delegations still had serious difficulties with specific points, it could not be said that the working group had reached consensus. Participants should therefore not confuse majority, even overwhelming support, with consensus. Finally, the Chairman stated that consensus had to be built by everyone and could not be achieved by isolating particular participants.

55. Finally, concerning a proposal for the appointment or election of an indigenous co-Chair, the Chairperson-Rapporteur informed the working group that he had held consultations and requested a legal opinion from the Secretariat. He recalled that the question had been raised previously at the first session of the open-ended inter-sessional ad hoc working group on a permanent forum for indigenous people, and it had been settled at that time following the practice of the working groups of the Commission on Human Rights and the legal opinion of the Office of Legal Affairs. He referred participants to paragraph 9 of the report of that session (E/CN.4/1999/83). Therefore, it was not possible to appoint a co-Chair.

(b) Self-determination, land rights and natural resources

56. All indigenous representatives affirmed that the right to self-determination was the fundamental underlying principle of the declaration and that compliance with this right was a fundamental condition for the enjoyment of other human rights and fundamental freedoms, be they civil, political, economic, social or cultural. It was underlined that in order to survive as distinct indigenous peoples in their own lands indigenous peoples had to have full control, politically, economically, socially and culturally, over their lives.

57. It was said that the studies of Special Rapporteur Mrs. Erica-Irene A. Daes on indigenous peoples and their relationship to land and the study of Special Rapporteur Miguel Alfonso Martinez on treaties, agreements and other constructive arrangements between States and indigenous populations as well as the study by Sub-Commission Special Rapporteur José Martinez Cobo supported the view that indigenous peoples had a right of self-determination.

58. Indigenous representatives expressed their full support for article 3 in its current wording. The representatives affirmed that the right to self-determination as contained in article 3 is the underlying principle of the draft declaration. It was stated that the draft declaration contained minimum standards.

59. An indigenous representative, speaking on behalf of the Indian Law Resource Centre, the Assembly of First Nations, the International Treaty Four Secretariat and the Grand Council of the Crees in response to government concerns about maintaining democracy, reminded government representatives that self-determination is considered to be the oldest democratic entitlement and that the Commission on Human Rights had confirmed that a democratic and equitable international order requires the realization of the right of all peoples to self-determination.

60. Some indigenous representatives said they were willing to consider changes that serve to strengthen or clarify the draft text. These changes would have to uphold the principle of racial equality and non-discrimination, would have to be consistent with existing international standards and not alter the core principles, including self-determination and the unqualified use of the term "peoples". So far, none of the changes proposed by Governments had met these fundamental criteria.

61. The representative of the International Organization of Indigenous Resource Development expressed his concern about initiatives being undertaken to propose new wording for article 3. To negotiate a text without regard to indigenous peoples' views flew in the face of General Recommendation XXIII (51) of 18 August 1997 of the Committee on the Elimination of Racial Discrimination in which it was stated that no decisions directly relating to the rights and interests of indigenous peoples should be taken without their informed consent. Furthermore, the Millennium Forum Declaration urged the United Nations to recognize and enshrine legislatively the right of self-determination of indigenous peoples.

62. The representative of France confirmed that his Government is in favour of recognizing the right of self-determination of indigenous people. He stressed that this right has to be exercised through negotiation and dialogue and should involve all populations concerned. He offered as a positive example the case of New Caledonia, where agreement on the process of self-determination had been reached through tripartite negotiations between the Kanak people, the Caldoches and the Government. This agreement later received broad popular support in the 1998 referendum.

63. A representative of the Indigenous People of Africa Coordinating Committee expressed the opinion that for African groups, self-determination meant that national Governments recognized the unique character of indigenous peoples' cultures and that the latter were consulted in national policy and planning.

64. The representative of Mexico explained that the position of his Government was based on four premises. First, Mexico recognized the concept of indigenous peoples. Second, collective rights specific to indigenous peoples were recognized in Mexico. Third, the concept of self-determination of indigenous peoples had already been incorporated in the constitutions of some of the states of the federation and there was an initiative to incorporate it into the national Constitution. The concept of self-determination was defined and delimited and was understood to mean autonomy for indigenous peoples in exercising a set of rights. Self-determination of indigenous peoples was always to be understood in accordance with national legislation and self-determination was to be understood with full respect for sovereignty and territorial integrity. The fourth premise was that Mexico understood the notion of self-determination as well as the notion of peoples in the context of its legislation and the international instruments to which it was party, in particular ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries.

65. The representative of Japan said that no human rights instruments within the United Nations system referred to collective rights. The domestic legislation of his country did not recognize collective rights and, therefore, his Government could not ensure these rights in the legal system. Individual rights could be exercised in a community. Japan could not accept collective rights without clarification.

66. Many indigenous representatives said that the principle and fundamental right of all peoples to self-determination was firmly established in international law. In this respect reference was made to the Charter of the United Nations, common article 1 of the International Covenants on Human Rights and the Vienna Declaration and Programme of Action.

67. Several indigenous representatives recalled that the majority of States were already bound to observe and respect the right to self-determination by virtue of their ratification of either or both of the International Covenants.

68. A few governmental representatives said the terms "self-determination" and "peoples" were not clearly defined in international law.

69. The representative of Bangladesh made reference to the right of self-determination as enshrined in the two covenants, implying that territorial integrity must be respected above all. She supported the Chairman's observation that the right of self-determination included the right of indigenous communities to respect and preserve their identity. She said that Bangladesh continued to support the Asian Group's position which focused on the need to define "indigenous people".

70. The representative of Cuba said that the right of self-determination was well developed in the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations. Cuba considered the concerns of some States with respect to self-determination as unfounded, given that it is clearly expressed in this declaration that nothing in it shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States. He affirmed that the Cuban delegation could not form part of an eventual consensus that would seek to modify or reduce in an arbitrary manner a principle of international law.

71. Many indigenous representatives said that all peoples must be treated on an equal footing. It would be discriminatory to proclaim self-determination as a right of all peoples, and at the same time to limit its application with respect to indigenous peoples. Self-determination and non-discrimination are peremptory norms of international law from which no derogation is permitted. The working group was not mandated to dilute the existing principles.

72. An indigenous representative from the organization Rights and Democracy added that if it was necessary to refine the concept of self-determination and its relationship to territorial integrity, that should be done within the framework applicable to all peoples and not only to indigenous peoples, in order to avoid any form of discrimination.

73. An indigenous representative, on behalf of the Indian Law Resource Centre and eight other indigenous organizations and nations, stated that the United Nations and government representatives must uphold their own norms and principles of equality, non-discrimination and prohibition of racial discrimination. To do otherwise would be a violation of existing international law and peremptory norms and outside the competence or jurisdiction of the working group as a United Nations body.

74. A joint statement by the International Indian Treaty Council and its affiliates stressed that in the International Covenants the right of self-determination is affirmed as a right of all peoples and that the right of self-determination for indigenous peoples in the declaration must therefore be stated in wording identical to that found in the Covenants. Any attempts by States to diminish or qualify this right for indigenous peoples must be seen as an act of racial discrimination.

75. The Maori Legal Service and Ka Lahui Hawai'i in a joint statement said that many Governments were attempting to make the draft declaration subject to domestic policies, raising the question of whether international human rights instruments are to be subject and subordinate to domestic legislation and policy. Such an approach to human rights standard-setting was inconsistent with international practice and would reduce the draft declaration to "cosmetic window-dressing". It was recalled that the declaration would be morally binding and would not have the same effect as a treaty or a convention which was legally binding in domestic and international law.

76. The representative of Finland said her delegation supported the use of the term "indigenous peoples" because it made the great number of collective rights in the declaration meaningful. Her delegation also supported adoption of the term "self-determination" in the draft declaration, provided that the passage concerning self-government (art. 31) was formulated in the manner proposed, so that it applied to internal and local affairs. She said that the principle of self-determination had two dimensions: external and internal. Her delegation suggested that article 45 of the draft declaration be formulated in accordance with article 8 (4) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992.

77. The representative of Pakistan reaffirmed that self-determination was one of the fundamental principles of international law, as enshrined in the Charter, the realization of which was the foundation for the enjoyment of all other rights. From a legal perspective there was no contradiction between the right of self-determination and territorial sovereignty; the two principles were mutually reinforcing. He recalled the study by the Special Rapporteur of the Sub-Commission, Hector Gros Espiell, on the right to self-determination and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations which provided that sovereign and independent States, in order to be entitled to respect for territorial integrity, should conduct themselves in compliance with the principles of equal rights and self-determination and should be possessed of a government representing the whole people. The representative of Pakistan also disagreed with the notion that the right of self-determination was relevant only to the process of decolonization. The right of self-determination was not a process of history. It was a principle of international law based on fundamental political postulates, i.e. legitimate power to govern can only be derived from the consent of the governed. He recalled that it was not colonization which had led to the emergence of the right of self-determination; it was the existence of the right of self-determination which propelled the process of decolonization and that process remained to be completed in certain parts of the world. He also cautioned the working group to be wary of "creative solutions".

78. In a joint statement on behalf of several indigenous organizations from Australia, an indigenous representative said that the distinction between internal and external self-determination suggested by some States was unhelpful. The equating of external self-determination with secession was artificial as it restricted the right and restricted choices. The right of self-determination required States to recognize human rights internally, within their territories, and also at the international level. The participation in United Nations forums was said to be an external expression of self-determination which did not involve secession or independence.

79. In this respect, the representative of the Saami Council said that it was unacceptable and discriminatory to restrict indigenous peoples' right of self-determination to internal self-determination. He said that although the vast majority of indigenous peoples would implement their self-determination through autonomy and self-government arrangements, one could not limit indigenous peoples' right of self-determination to such arrangements. The Human Rights Committee in its concluding observations had acknowledged that the right of self-determination, as stated in article 1 of the Covenant, also applies to indigenous peoples and had requested States parties to include the implementation of indigenous peoples' right of self-determination in their reports.

80. The representative of the International Alliance of Indigenous and Tribal Peoples of the Tropical Forest added in this respect that territorial integrity always depended upon the collective will of the peoples and respect for human dignity, different faiths and cultures, non-discrimination, non-domination and prohibition of racial discrimination and exploitation. The refusal of the right of self-determination and autonomy would mean seeking to maintain discrimination, domination and exploitation.

81. The representative of the World Bank said that the Bank was interested in all aspects of the future of indigenous peoples, including the right to land and the use of natural resources. He said that development strategies should take four major points into account. Firstly, land and natural resources are essential conditions in the eradication of poverty. Secondly, legal measures must be considered and should take into account the full ambit of land rights. Thirdly, indigenous peoples must have the possibility to be associated with projects that refer to land rights. Fourthly, social impact studies for all projects or activities affecting indigenous peoples should be undertaken. He also emphasized the importance of the spiritual relationship of indigenous peoples with their land.

82. The representative of Norway said that the right of self-determination was a right which should be exercised within existing, independent and democratic States. In that context, the right of self-determination includes the right of indigenous peoples to participate at all levels of decision-making in legislative and administrative matters and in the maintenance and development of their political and economic systems.

83. The representative of Spain declared that her Government supported the right of self-determination for indigenous peoples, on the understanding that this right would be exercised within a State, i.e. as a process of political, territorial and administrative decentralization that would permit indigenous peoples to participate in all decision-making that affected them, but that would in no case threaten State sovereignty or the territorial integrity of democratic States.

84. An indigenous representative of the Indian Council of South America said that the division of self-determination into internal and external manifestations is a way of diverting the discussion. Internal self-determination is a multiple manifestation of individual rights and of freedom of association, which States claim to grant to indigenous peoples in the same way as to other citizens. Linking external self-determination to the disintegration of States was a means of

bringing non-indigenous peoples into opposition with indigenous peoples. Some States could accept self-determination, even secession, if it is requested by people of the majority linguistic and ethnic group, but not if requested by indigenous peoples. This seems discriminatory, and even racist.

85. The representative of Canada said that the issue raised by the draft declaration was whether the right of self-determination applies to indigenous peoples living within existing States and, if so, what this right consists of. Her Government accepted a right of self-determination for indigenous peoples which respected the political, constitutional and territorial integrity of democratic States. In that context, exercise of the right involved negotiations between States and the various indigenous peoples within those States to determine the political status of the indigenous peoples involved and the best means of pursuing their economic, social and cultural development.

86. A representative of the Indian Movement "Tupaj Amaru" explained that even before the colonization of the Americas, indigenous social relations were based on collective property regulated by customary law and embedded in the principle of self-determination. The international instruments that recognize the right of self-determination oblige States to promote and respect that right. He stressed that self-determination and autonomy in local affairs was a condition for the survival of indigenous identity and did not imply any intention to create States within States.

87. An indigenous representative from Hawaii stated that the concept of territorial integrity imposed a requirement of legitimacy on the State. An indigenous representative, on behalf of the Indian Law Resource Centre, the Assembly of First Nations, the International Treaty Four Secretariat and the Grand Council of the Crees, strongly opposed proposals to add to article 3 the notion of territorial integrity. She stated that such proposals were unnecessary and would have the potential of stifling the natural evolution of their right to self-determination under international law.

88. The representative of Guatemala stated that it was not necessary to redefine or restrict the meaning of the right of self-determination. He recalled that during the colonization period, the right of self-determination had created independence movements. Today, in independent States peoples and national groups within the State were able to define their own political, economic, social and cultural development through decentralization processes and autonomy. He said it was a contradiction to believe, on the one hand, in a pluralistic and participatory democratic system and, at the same time, to deny and restrict the right of self-determination.

89. The representative of Australia noted that participants had differing understandings and difficulties with the use of the term self-determination in the context of the draft declaration. For many people it implied the establishment of separate nations and separate laws. Since this would be inappropriate to his country's situation, his Government was unable to accept its inclusion.

90. The representative of the Russian Federation said that the right of self-determination could, on the one hand, be considered as a kind of right to development, including indigenous participation in the decision-making process or control over various processes on the territories indigenous peoples had traditionally occupied; on the other hand, it could be understood in its

classical context of decolonization. In the view of his delegation, the relevant articles of the draft declaration have to be formulated in such a way as to reflect the internal aspect of the right of self-determination, which meant for his Government wide autonomy within existing States. According to Russian federal law, indigenous peoples have the right to own and use lands of different categories which they have traditionally occupied in order to pursue traditional occupations and uses and to use natural resources.

91. The indigenous representative of the Russian Association of Indigenous Peoples of the North said that the indigenous peoples of the Russian Federation respected the political, constitutional and territorial integrity of the Russian Federation. Self-determination under article 3 of the declaration would not threaten the territorial integrity of the Russian Federation. He also said the right of self-determination should not be viewed within the traditional context of decolonization.

92. The representative of Denmark reconfirmed the support of the Government of Denmark and the Greenland Home Rule Government for the right of indigenous peoples to self-determination and for this right to be included in the draft declaration. During the last several decades new forms of relationships between indigenous peoples and States had evolved. The establishment of the working group and the decision to establish the Permanent Forum on Indigenous Issues were examples thereof. The representative had noted that a number of delegations had expressed a need for clarification, especially with regard to the maintenance of territorial integrity. Her Government could accept article 3 in its current wording, but was open to further discussion. One way of accommodating the concerns while keeping article 3 intact could be to expand on article 45 as proposed by Finland.

93. The representative of Argentina, referring to article 3, said that the position of his Government had not changed. It would be appropriate, if the word "peoples" were to be used, to transcribe in the draft declaration the third subparagraph of article 1 of ILO Convention No. 169.

94. Many indigenous representatives opposed the suggestions made by some States that article 3 of the draft declaration should be altered in a manner that entrenches permanently the notion of the territorial integrity of States.

95. Indigenous representatives noted that territorial integrity was not a principle tied solely to the State, and that the integrity of indigenous peoples' territories also had to be taken into account.

96. Several indigenous representatives said that States' concerns about secession were misplaced and that these concerns were already taken care of in existing international law. Therefore, it should not be necessary to make any qualifications in the declaration in this regard.

97. Other indigenous representatives stated that any concerns about possible secession were already addressed in article 45 of the draft declaration. It was also said that the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations of 1970 had clarified the relationship

between the principle of self-determination and those of territorial integrity and national unity. Reference was also made to General Assembly resolution 637 A (VII) of 16 December 1952, in which the Assembly requested Member States to take practical steps to prepare indigenous populations for self-government or independence.

98. Indigenous representatives from Bangladesh and Bolivia expressed the view that self-determination was the way to resolve conflicts and to promote the peaceful coexistence of peoples. This was supported by many indigenous representatives.

99. An indigenous representative from the Philippines stated that the adoption of the draft declaration would strengthen the capacity of indigenous peoples to chart their economic, social, cultural and political destinies and would lessen the possibility of conflict between indigenous peoples and States. The declaration would enable indigenous peoples to bring about sustainable development and to contribute significantly to the protection of the world. In the end it would also strengthen the United Nations as a global body dedicated to defending the rights of the weakest and most vulnerable.

100. Many indigenous representatives stated that the land and its resources were fundamental to the existence of indigenous peoples. It was also fundamental to indigenous peoples to have the right of self-determination. The rights to land, its resources and self-determination were applicable to all the provisions in the draft and could not be separated. Without them the declaration would be useless and unacceptable.

101. An indigenous representative speaking on behalf of the Indian Law Resource Centre, the Assembly of First Nations, the International Treaty Four Secretariat and the Grand Council of the Crees emphasized, in the context of self-determination, the right not to be deprived of one's means of subsistence. She drew attention to the economic, social, cultural, spiritual and political dimensions of the right of self-determination.

102. The representative of Ecuador said that the Constitution of his country declared Ecuador to be a multicultural and multi-ethnic State. He added that Ecuador guarantees collective rights of indigenous peoples, such as property rights to communal lands, the right to be consulted, the right to benefit from natural resource exploitation on their lands, as well as intellectual property rights. Granting those rights had committed indigenous peoples to the Constitution and the democratic system and did not conflict with the territorial integrity or the political system of Ecuador.

103. An indigenous representative of the Asociación Kunas Unidos por Napguana said that chapter 26 of Agenda 21 recognizes that indigenous peoples play an important role in curbing climate change. He said that indigenous peoples need self-determination in order to protect their lands, territories and resources. By delimiting and eroding the right of self-determination, no contribution is made to the development of society as a whole.

104. The representative of the Saami Council said that many Governments opposed international recognition of indigenous peoples' right of self-determination owing to their fear of losing control over indigenous lands and natural resources. He underlined that land and natural resource rights are an integral part of the right of self-determination. He drew attention to

common article 1, paragraph 2, of the International Covenants which states that all people have the right to "freely dispose of their natural wealth and resources". The provision also includes a negative guarantee for people not to "be deprived of its own means of subsistence".

105. Several other indigenous representatives made reference to the concluding observations of the Human Rights Committee on Canada (CCPR/C/79/Add.105, para. 7) and Norway (CCPR/C/79/Add.112, para. 17) in 1999, as well as concluding observations of the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination. It was said that these observations confirmed the right of indigenous peoples to self-determination.

106. A representative of an indigenous organization from Australia said that amendments to Native Title Act impeded and restricted the rights of Aboriginal people to the land and impeded their access rights to the nation's mineral wealth and other resources. He said that the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights had concluded that the amendments to the Native Title Act were racially discriminatory. An indigenous representative who spoke on behalf of the International Indian Treaty Council and the Movimiento de la Juventud Kuna referred to General Recommendation XXIII of the Committee on the Elimination of Racial Discrimination in which it was stated that indigenous peoples who lost their land to companies suffered a violation of the rights under the Convention.

107. Several government delegations said that the articles pertaining to land and natural resources needed redrafting. The observer for Australia said that, in contributing to the development of those parts of the draft declaration which deal with land and natural resources, his delegation would be guided by domestic law and practice as they are progressively clarified.

108. The representative of Canada said that her Government recognized the collective nature of the interest of indigenous peoples in lands and resources and that indigenous peoples have the right to own, control, develop and use their lands and resources. Her Government believed that it was critical to find language which reconciles the interests of indigenous peoples in land and resources, and the rights of States. The current text needed amendment and clarification for it to provide the needed guidance. In this respect, she proposed that a clear distinction be drawn between the terms "lands" and "territories".

109. The representative of New Zealand said that her Government could accept the inclusion in the draft declaration of a right to self determination for indigenous people if the meaning was clearly elaborated in the text, was consistent with domestic understanding of the relationship between Maori and the Crown, and was clearly an internal right of self-determination which respected the territorial integrity of democratic States and their constitutional frameworks where these met current international human rights standards. In its present form, however, some of the language of the draft declaration, including on land and resources, would be inconsistent with New Zealand government policy and would need to be clarified to ensure consistency with the Treaty of Waitangi and international and New Zealand law.

110. The representative of Venezuela reported that his Government recognized a number of collective rights of indigenous peoples, among them the collective ownership of ancestral lands.

He also noted that natural resources are under the control of the State and that indigenous peoples form part of the nation State and thus should respect its territorial integrity and national sovereignty.

111. Several indigenous representatives from Africa noted that they had been evicted from their lands by colonial settlers and that at the end of colonialism the Governments that took over had continued to take more land away from indigenous peoples through development initiatives, including resettlement schemes, creation of national parks and re-allocation of land to private developers.

112. An indigenous representative of the Mejlis of Crimean Tatar People stated that the adoption of the draft declaration would be an important impetus for States to respect the rights to land and resources of the people in her country.

113. The representative of the World Bank said that it was concerned with important issues concerning indigenous peoples such as land tenure and the control over natural resources. The Bank was willing to assist developing countries in programmes and policies that benefit indigenous peoples, including the protection of their natural environment, the creation of institutions for their development and programmes to combat poverty.

114. The representative of Norway informed the working group that his Government was currently preparing legislation concerning the use, management and ownership of land and resources in Finnmark county, where there is a large Sami population. In addition, a committee is being formed to consider Sami rights in other parts of Norway.

115. An indigenous representative of the Aboriginal and Torres Strait Islander Commission said that in considering land and resource rights, Governments should not be limited by domestic constitutions, legislation or policy. Such an approach would conflict fundamentally with the purpose of international human rights standard-setting.

Informal discussion of articles

116. The working group discussed in informal meetings articles 1, 2, 12, 14, 44 and 45. At the beginning of these discussions, the Chairperson-Rapporteur said that the working group would have an opportunity to consider substantive proposals. He drew the attention of participants to previous reports of the working group, in particular those of the second and fifth sessions (E/CN.4/1997/102 and E/CN.4/2000/84) which contained an account of general positions on those specific articles. He therefore invited participants not to restate their positions, but to present concrete proposals for discussion purposes only. In particular, he asked governmental delegations to continue informal consultations with a view to bringing positions closer together.

117. The Chairperson-Rapporteur received seven documents for discussion on articles 1, 2, 12, 13, 14, 44 and 45. The content of those papers will be explained in the following paragraphs. However, it is noted that in all those documents the term "peoples" appeared between brackets. Annex I to this report contains a note explaining the different

positions of governmental delegations with respect to the use of the term "peoples" in the proposals they have presented. It was noted that all indigenous representatives and some governmental delegations can accept the use of the term "indigenous peoples".

118. Indigenous representatives opposed the inclusion of the proposals made by Governments in annex I to this report as well as the explanatory note on the term "peoples" because they were presented for discussion purposes and the content of the discussion would appear in the report. They also requested the inclusion of a statement on the use of the term "peoples" in annex II to the report, which contains indigenous representatives' proposals. The Chairperson-Rapporteur decided that both the proposals and the note would be included in annex I.

119. Indigenous representatives reiterated their strong opposition to focusing discussion of specific articles on anything other than the original text of the declaration, as approved by the Sub-Commission. Indigenous representatives emphasized that the accepted procedure for the working group since its inception had been to consider the original text as the basis for all work and discussions addressing the declaration's underlying principles, as well as the specific content of the articles. Many indigenous representatives also stated that their comments on individual articles under discussion would be made on the basis of the wording, intent and integrity of the original text taken as a whole. They requested that government delegates also uphold this principle in all work and discussions undertaken during this session.

Article 1

120. The Chairperson-Rapporteur submitted to the working group a document for discussion on article 1 of the draft declaration. This document had been drafted by governmental delegations participating in the working group, following a request by the Chairperson-Rapporteur. The document contained alternative language for article 1 and comments on the proposal. The alternative language for article 1 is contained in annex I.

121. The document for discussion of article 1 stated that some States could accept article 1 as originally drafted and that international human rights instruments generally guarantee rights of individuals. Some States suggested a specific reference to individuals to emphasize that the declaration referred to individual rights as well as collective rights. Some States thought that the drafting of this article could be improved by more closely reflecting the Universal Declaration of Human Rights.

122. During the informal debate, several Governments said that they could agree with the original text of article 1. Some States favoured the inclusion of the word [applicable] linked with either [law] or [instruments], as not all international law and instruments was applicable to all States. Many States considered that the use of [law] included international customary law, while others considered that international customary law was included in the term [instruments].

123. Concerning the proposed second paragraph of article 1, some States stated that this paragraph was not necessary, while other States held that the second paragraph would emphasize the collective dimension in the exercise of the human rights and fundamental freedoms recognized in the draft declaration. These States noted that the wording of the second paragraph was consistent with international human rights instruments, such as the International Covenant

on Civil and Political Rights and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, while others felt that the second paragraph would add a definition of collective rights to the declaration to which they could not agree.

124. Indigenous representatives urged the working group to adopt article 1 in its original draft, as the alternative language proposed was unnecessary and weakened the protection of indigenous peoples. They stressed that the protection of individuals was already guaranteed by other articles of the draft declaration, such as articles 2, 5, 6, 7, 8, 9, 18, 22, 32, 39, 43 and 45, and that important human rights instruments such as the International Covenant on Civil and Political Rights provided for the protection of the individual rights of all people, including indigenous people. Indigenous representatives further noted that most States that spoke to the subject said that they could accept the original language of article 1. Most indigenous representatives stated that insertion of the term "applicable" would limit the enjoyment of the totality of human rights law for indigenous peoples and reduce the international protection they were afforded by instruments ratified by specific States.

125. Many indigenous representatives underlined the importance of collective rights for indigenous peoples and reminded Governments that the preamble to the draft declaration, as well as several international instruments such as ILO Convention No. 169, had already addressed collective rights of indigenous peoples and that one of the main aims of the draft declaration was to acknowledge and promote the collective rights of indigenous peoples. Many indigenous representatives asked Governments not to include the proposed second paragraph as they believed it would impose a limitation on the exercise of their collective rights. Several indigenous representatives expressed concern with regard to the use of the word [instruments] as it would exclude customary international law. In their view the term "law" included all international human rights law, both positive and customary, while "instruments" only referred to those international instruments that States had endorsed.

126. The Chairperson-Rapporteur noted progress in the dialogue on article 1 and that there was still no consensus on the text. Therefore, he proposed to close the discussion on this article and to come back to it at a later stage.

Article 2

127. The Chairperson-Rapporteur submitted to the working group a document for discussion on article 2 of the draft declaration. This document had been drafted by governmental delegations participating in the working group, following a request by the Chairperson-Rapporteur. The document contained alternative language for article 2 and comments on the proposal. The alternative language for article 2 is contained in annex I.

128. The document for discussion stated that some States could accept article 2 as originally drafted and that some States believed that the term "adverse" should be deleted and that express reference should be made in this paragraph to "special measures" to promote equality, as per article 1 (4) of the International Convention for the Elimination of All Forms of Racial Discrimination. Some States believed that the language of this article regarding discrimination should more closely reflect article 2 (1) of the Universal Declaration of Human Rights.

129. Several Governments said that they were open to proposals that would improve the text. One of those proposals would be the deletion of the term "adverse". It was said that all discrimination was adverse and that since this did not mean that positive discrimination was to be precluded, a new sentence with a reference to special measures should be added at the end of the article.

130. Several Governments said that article 22 of the draft declaration already contained provisions for affirmative action. It would therefore lead to confusion also to include a reference to affirmative action in article 2; the new sentence was therefore not necessary. Some Governments said that a declaration was aspirational and that the proposed new sentence was too specific for a declaration.

131. All indigenous representatives strongly supported article 2 as originally drafted and urged the working group to accept the article as it stood. Indigenous representatives also stated that the proposed changes did not strengthen or clarify the text and were therefore not necessary or acceptable.

132. Indigenous representatives urged the working group to maintain the word "adverse" in accordance with the original wording. Because of a need to distinguish between positive and adverse discrimination, indigenous peoples had insisted on the inclusion of the word "adverse" in the draft adopted by the Working Group on Indigenous Populations. Many indigenous representatives said that indigenous peoples were victims of double discrimination and that the original text was clear and reflected the reality of indigenous peoples in many countries.

133. Indigenous representatives said that positive discrimination had been used in some cases against indigenous peoples by non-indigenous people. Many indigenous representatives said the new proposed sentence was redundant and that leaving it out would not preclude affirmative action. Other indigenous representatives stated that given the fact that many States had already ratified the International Convention on the Elimination of All Forms of Racial Discrimination, they were already obliged to respect article 1 (4). Another argument was that by adding the new sentence special measures would be limited to those identified in article 1 (4).

134. The Chairperson-Rapporteur said that the working group needed to reflect on the proposals on article 2 that had been put forward. He noted that article 2 was connected with article 22 of the draft declaration. He said that there was still no consensus and that the article would be discussed in the future.

Article 44

135. The Chairperson-Rapporteur submitted to the working group a document for discussion on article 44 of the draft declaration. This document had been drafted by governmental delegations participating in the working group, following a request by the Chairperson-Rapporteur. The document contained alternative language for article 44 and comments on the proposal. The alternative language for article 44 is contained in annex I.

136. The document for discussion stated that some States could accept article 44 as originally drafted. It further stated that the term "existing or future" in the English version was redundant; it was not consistent with the Spanish and French texts, which were clearer. Therefore, it was suggested that the English version be reviewed to make it consistent with the Spanish and French versions and that improved language be developed through consideration of other international instruments.

137. Indigenous representatives noted that many Governments were able to accept the text as it stood. They also noted that no alternative wording had been proposed. They therefore urged the working group to adopt the article without putting the word "peoples" in brackets, that is in its original version. Indigenous representatives referred to paragraph 4 of the report of the fifth session of the working group (E/CN.4/2000/84) to explain that the use of the term "indigenous peoples" did not imply acceptance of any definite expression until there was a consensus on the term. Indigenous representatives stressed that paragraph 4 should be sufficient to indicate the current status of the discussion of this matter and should remove the need to place brackets around the word "peoples" in governmental proposals in this and other articles.

138. The Chairperson-Rapporteur had proposed an English version of article 44 that was consistent with the Spanish and French versions. The text read as follows: "Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have or may acquire in the future." He also had held consultations with governmental delegations and indigenous representatives concerning use of the term "indigenous peoples", in order to avoid repetition of the same debate throughout the discussion of all the articles where the term appeared. The Chairperson-Rapporteur informed the working group that the consultations had not produced an agreement either on his proposed English version of article 44, or on a working solution on the use of the term "peoples". Indigenous representatives expressed support for the wording in the official English text and did not want translation issues to present an obstacle to the adoption of the article at the current session. They referred to their previous requests for a technical review by the Secretariat of the translation of the declaration.

Article 45

139. The Chairperson-Rapporteur submitted to the working group a document for discussion on article 45 of the draft declaration. This document had been drafted by governmental delegations participating in the working group, following a request by the Chairperson-Rapporteur. The document contained comments on article 45 and is contained in annex I.

140. The document for discussion on article 45 stated that the issue could also be addressed in the context of discussions relating to article 3. It also stated that although no alternative language was being proposed, the article was not yet ready for adoption because it qualified the entire declaration and would have to be reviewed at a later stage.

141. Governments explained that though they could agree to the original text of the article, they considered that it was necessary to wait until the whole declaration had been approved before adopting the article.

142. Indigenous representatives expressed their concerns about the proposal to postpone the adoption of this article. They said that it was a standard article used at the end of major international instruments and urged the working group to adopt provisionally article 45. Its adoption would be a sign of progress. They asked the Chairman-Rapporteur to call for consensus on article 45 since there was no alternative language proposal. The article should be adopted at least in principle. The indigenous caucus expressed the view that the discussion on articles 44 and 45 had not been closed, but merely suspended, and called for reopening of the discussion in order to reach consensus on those articles.

143. The Chairperson-Rapporteur considered it a positive step that no alternative language had been proposed for article 45. He had carried out consultations with governmental delegations in order to determine whether there was a possibility that it could be adopted during the session, but the consensus among governmental delegations was that the adoption of this article should be postponed, as stated in their proposal.

Article 12

144. The Chairperson-Rapporteur submitted to the working group a document for discussion on article 12 of the draft declaration. This document had been drafted by governmental delegations participating in the working group, following a request by the Chairperson-Rapporteur. The document contained alternative language for article 12 and comments on the proposal. The alternative language for article 12 is contained in annex I.

145. The document for discussion of article 12 stated that some States could accept the article as originally drafted. The proposal also stated that many States believed that the recognition of a right to practise and revitalize cultural traditions and the issue of the return of cultural property taken without consent should be treated in two separate paragraphs. Some States were concerned with the potential retroactive application of the second paragraph of the alternative language. Others did accept that this paragraph could apply to property taken in the past. A number of States could dispense with a specific reference balancing indigenous and third party rights in this article, as long as a new general paragraph on third party rights was included. They suggested that this new paragraph could read as follows:

> "Implementation of the rights in this Declaration shall take into account measures necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others." (Source: article 18 (3) ICCPR) or
>
> "Although this Declaration, in itself, does not modify international or national standards, it seeks to promote the analysis and review of those norms which contravene or impede the full realization of the rights set forth in it, without affecting the legitimate rights of other persons."

146. Governments also noted in their proposal that the issue of intellectual property, including in relation to designs, technologies and visual and performing arts was substantively dealt with in article 29 of the draft declaration.

147. Several governmental representatives supported the proposal to split the original article into two paragraphs. Some expressed their concern about the term "restitution", pointing out that there were a variety of problems with the implications of restitution, such as whether it meant return of property or compensation, and what kind of compensation should be provided if the object was broken or lost. Another main problem was that restitution could lead to conflict with the rights of third parties or the national interest. Several Governments suggested replacing the word "restitution" by the term "return". Some Governments suggested that the detailed meaning of and limits on the term "restitution" and on the rights of third parties should be defined in future conventions or other binding international instruments and in national legislation, so that these rights could be further developed in conformity with the declaration.

148. Some Governments thought that compensation or restitution should be in conformity with domestic law and that proceedings should apply equally to indigenous people and other nationals of a given country. Other governmental representatives considered unacceptable the reference in the alternative text to national legislation, as the rights recognized in the draft declaration were to inspire new international and national legislation or the revision of existing instruments which did not yet fully guarantee indigenous peoples' rights.

149. All indigenous representatives strongly supported article 12 as originally drafted and urged the working group to adopt the article. Several indigenous representatives highlighted the close interconnection of articles 12, 13 and 14 that constituted Part III of the draft declaration entitled "Culture, Religion and Language", and referred to previous discussions on these articles. In this connection, they expressed alarm at the large number of brackets and qualifications proposed by States.

150. Many indigenous representatives explained that the proposed reference to "conformity with domestic laws" represented an unacceptable weakening of the original text. The declaration should set international standards with which domestic laws must be brought into line. Indigenous peoples also opposed inserting the term "as far as practicable" because they thought that most human rights standards had resource implications and that was no reason to qualify any right in the declaration.

151. Some indigenous representatives recalled the link between self-determination and the right to practise and revitalize their cultural traditions and customs. They underlined that indigenous culture and tradition, as well as methods of production and organization, constituted a common heritage of humankind and that the international community had to protect them from extinction and prevent ongoing violations. Indigenous representatives made reference to protection already provided through instruments of the United Nations Educational, Scientific and Cultural Organization and the ILO, as well as by the International Convention on the Elimination of All Forms of Racial Discrimination, and said that the declaration should not be weaker than existing instruments.

152. Some indigenous representatives stressed that indigenous communities imposed strict regulations on their traditions to avoid their abuse and that there was a need for cultural resource management by indigenous peoples. Moreover, protection was urgently needed to stop the

ongoing theft of cultural, intellectual, religious and spiritual property of indigenous peoples. Some indigenous representatives said that the purpose of the article was to amend integrationist approaches and to recognize the value of culture and traditions.

153. Indigenous representatives stressed the importance of reparation for and restitution of the cultural heritage of indigenous peoples. Some indigenous representatives stated that the proposed redrafting of paragraph two would make the concept of a right to restitution of their cultural, intellectual, religious and spiritual property meaningless. They explained that cultural prohibitions were often entrenched in discriminatory domestic laws and therefore, they could not accept that their right to practise and revitalize their cultural traditions and customs should be limited in the draft declaration to those rights that were in conformity with domestic laws. The effect of the proposed language would be to remove any obligation of States. The non-retroactive application of article 12 was in conflict with the prohibition of racial discrimination. The removal of the reference to intellectual property eroded the protection provided in the current text.

Article 14

154. The Chairperson-Rapporteur submitted to the working group a document for discussion on article 14 of the draft declaration. This document had been drafted by governmental delegations participating in the working group, following a request by the Chairperson-Rapporteur. The document contained alternative language for article 14 and comments on the proposal. The alternative language for article 14 is contained in annex I.

155. The document for discussion of article 14 stated that some States could accept the article as originally drafted. It further stated that some States believed that paragraph 2 of article 14, as originally drafted, could be clarified or strengthened. Most States considered that the issues contained in paragraph 2 of article 14 should be addressed in the context of other articles of the declaration. Some States therefore suggested that the part of article 14 that read "States shall take effective measures, whenever any right of indigenous peoples may be threatened, to ensure this right is protected" should be considered in the context of articles 37 and 39 of the draft declaration, and that the part of article 14 that read "and also to ensure that they can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means" should be considered in the context of article 19.

156. It also stated that if it were agreed that issues contained in paragraph 2 of article 14 would be addressed in other articles, some States considered that the inclusion of a reference to States' obligations in article 14 should be discussed. Some States expressed the concern that the text as drafted might conflict with copyright laws and that this concern could be addressed by the inclusion of a general clause on third party rights.

157. Several Governments stressed the importance of linguistic rights set out in the first paragraph, and said that they would like to see that paragraph strengthened. Some added that the second paragraph referred to civil and political rights and should therefore be considered in the context of the articles of the declaration which were relevant to those rights. Some Governments suggested that the second paragraph should be applied to all rights and that States should take

effective and efficient measures whenever any right of indigenous people was threatened, and not only "where necessary". Some government representatives expressed their concerns about the resource implications of providing interpretation in all "political, legal and administrative proceedings".

158. All indigenous representatives urged Governments to adopt this article in its original version. They noted that there were no proposals for alternative texts. Some indigenous representatives agreed that interpretation or other means to be understood in "political, legal and administrative proceedings" would have resource implications. They stressed that additional resources would be necessary for indigenous peoples to participate in a meaningful way in such proceedings and that parts of the national budget should be redistributed for this purpose. They further stated that indigenous peoples made important contributions to the national economy and that public expenditure should therefore be used for effective measures for the protection of their rights.

159. Indigenous representatives expressed their concern because of the short time available to prepare for the discussion of this proposal.

160. The Chairperson-Rapporteur summarized the discussion, saying that there was general agreement on paragraph 1 of article 14, but that some concerns on the second paragraph needed to be addressed in the future.

Article 13

161. The Chairperson-Rapporteur informed the working group that he had received a document for discussion on article 13 of the draft declaration. This document had been drafted by governmental delegations participating in the working group, following a request by the Chairperson-Rapporteur. The document contained alternative language for article 13 and comments on the proposal.

162. The Chairperson-Rapporteur stated that owing to time constraints, it was not possible to consider that document. He suggested including the alternative language in annex I to the report, so that it could be translated. The participants could then examine the proposal in order to be adequately prepared for its consideration at the next session of the working group.

163. All indigenous representatives opposed the inclusion of the alternative language of article 13 in annex I to the report as the annexes only contained proposals that had already been discussed by the working group.

164. The Chairperson-Rapporteur decided not to include in annex I the alternative language for article 13. Nevertheless, in the interest of transparency as well as to allow participants to prepare the discussion of this article at the next session of the working group, he decided that the paper would be circulated informally.

165. The Chairperson-Rapporteur closed the sixth session of the working group by saying that progress had been made. Six additional articles had been discussed and the working group had received few proposals for changes to those articles. Progress was due to better preparation by

all participants during the inter-sessional period. An essential aspect of such preparation had been the broad consultations undertaken by the Chairperson-Rapporteur with all participants. He also welcomed the initiatives by Governments and indigenous representatives to consult amongst themselves. In this regard, he informed the working group that he would request the Commission on Human Rights to authorize him to once again conduct broad consultations and to invite all participants to do the same. Such consultations should focus on an early selection of the articles that should be considered at the next session. In this regard, he recalled the decision taken in 1996 by the working group to cluster articles in order to facilitate their consideration.

166. He finally informed the working group that he would convey to the Commission on Human Rights the working group's concerns about the facilities required for the fulfilment of its mandate, in particular regarding interpretation and translation services. In this regard, there was consensus that such facilities should take into account the unique nature of the working group within the United Nations system, both because of its composition and its methods of work.

Annex I

AMENDMENTS PROPOSED BY GOVERNMENTS FOR FUTURE DISCUSSION

Explanatory note

There is no consensus on the term "indigenous peoples" at the working group on the draft declaration (WGDD). Some States can accept the use of the term "indigenous peoples". Some States can accept the use of the term "indigenous peoples" pending consideration of the issue in the context of discussions on the right of self-determination. Other States cannot accept the use of the term "indigenous peoples", in part because of the implications this term may have in international law including with respect to self-determination and individual and collective rights. Some delegations have suggested other terms in the declaration, such as "indigenous individuals", "persons belonging to an indigenous group", "indigenous populations", "individuals in community with others", or "persons belonging to indigenous peoples". In addition, the terms used in individual articles may vary depending on the context. Some delegations have suggested that if the term "indigenous peoples" is used, reference should also be made to Article 1.3 of ILO Convention No. 169. Hence, the bracketed use of the term "indigenous peoples" in the draft declaration is without prejudice to an eventual agreement on terminology.

In the proposals that follow, references to the text of the original draft are highlighted in bold.

Article 1[a]

1. **Indigenous** [individuals] [and] **[peoples] have the right to the full and effective enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and** [applicable] **international human rights [law]** [instruments].

[2. Indigenous individuals may exercise their rights, including those set forth in this Declaration, individually as well as in community with other members of their group, without any discrimination.]

Article 2[a]

Indigenous individuals [and peoples] are free and equal to all other individuals [and peoples] in dignity and rights, and have the right to be free from any kind of [adverse] discrimination, in particular that based on their indigenous origin or identity. [This does not preclude special measures as contemplated in article 1, paragraph 4, of the International Convention on the Elimination of All Forms of Racial Discrimination.]

Article 12[a]

1. **Indigenous [peoples] have the right to practise and revitalize their cultural traditions and customs** [in conformity with domestic laws]. [Recognizing this right,] [States should/shall facilitate the efforts of indigenous [peoples]] **[This includes the right** [as far as practicable]] **to maintain, protect and develop the [past, present and future] manifestations of [their]cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.**

2. States should/shall [make [best] [appropriate] efforts], [to] [promote] [facilitate] the return to indigenous [peoples] of their **cultural, [intellectual], and religious [and spiritual] property [taken without their free and informed consent]** [after the present Declaration comes into effect], **[or in violation of [their] laws, traditions and customs]** [and] [or] [in violation of relevant laws and regulations].

Article 14[a]

1. Indigenous [peoples] have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

[2. States shall take effective measures, whenever any right of indigenous peoples may be threatened, to ensure this right is protected and also to ensure that they can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.]

Article 15[b]

Indigenous individuals, particularly **children, have the right to all levels and forms of education of the State** on the same basis as other members of the society. **[Indigenous peoples] have** the **right**, in consultation with competent authorities in the State, and in accordance with applicable education laws and standards, **to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning**.

Indigenous children living outside their communities should, where practicable, have **access to education in their own culture and language**.

States [shall/should] **take effective measures to provide appropriate resources for these purposes**.

Article 16[b]

The dignity and diversity of **[indigenous peoples'] cultures, traditions, histories and aspirations** should be **appropriately reflected in education and public information**.

States [shall/should] **take effective measures, in consultation with the [indigenous peoples] concerned, to** combat **prejudice, eliminate discrimination and promote tolerance, understanding and good relations among [indigenous peoples] and all** other **segments of society**.

Article 17[b]

[Indigenous peoples] have the right to establish their own media in their own languages and **to access all forms of non-indigenous media**, on the same basis as the other members of the society.

States [shall/should] **take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity**. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 18[b]

[Indigenous peoples] shall **enjoy fully all rights established under** applicable **international and national labour law**. States should take immediate and effective measures to ensure that indigenous children are protected from the worst forms of child labour.

Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour, employment or salary.

Article 44[a]

Nothing in this Declaration may be construed as diminishing or extinguishing existing or future rights indigenous [peoples] may have or acquire.

Article 45[a]

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.

Notes

[a] As discussed at the sixth session of the working group.

[b] As discussed at the fifth session of the working group.

Annex II

PROPOSALS BY INDIGENOUS REPRESENTATIVES

Explanatory note on the use of the term indigenous "peoples"

Since the establishment of the Working Group on Indigenous Populations in 1982, indigenous representatives have consistently asserted the critical importance of accurately identifying indigenous peoples as "peoples" in the work of the United Nations. There can be no doubt that we are peoples with distinct historical, political and cultural identities and will remain so. We are united by our histories as distinct societies, as well as by our languages, laws and traditions. In addition, the profound social, cultural, economic and spiritual relationships of indigenous peoples with our lands, territories and resources are unique. Indigenous peoples are unquestionably peoples in every legal, political, social, cultural and ethnological meaning of the term. It would be discriminatory, illogical and unscientific to identify us in the United Nations Declaration on the Rights of Indigenous Peoples as anything less than peoples.

Our status as peoples is fundamental to the recognition of our right of self-determination in all its collective political, economic, social, cultural and spiritual dimensions. To deny our right to define ourselves and to be recognized as indigenous peoples is to deny a fundamental expression of our right to self-determination.

In 1989, in its General Comment No. 18 (37) on Non-discrimination, the Human Rights Committee stated in paragraph 7:

> "... the Committee believes that the term 'discrimination' as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms."

Regrettably, certain States persist in seeking to deny or otherwise restrict the status of indigenous peoples as "peoples". This is done to deny us the recognition and enjoyment of our right to self-determination on an equal footing with other peoples. These positions are discriminatory and undemocratic. Therefore, such positions run counter to the most fundamental purposes and principles of the United Nations.

We hereby request, as we have done in the past, that Member States of the United Nations fully respect the Charter, the International Covenants and other human rights instruments in the present standard-setting process. In particular, Member States have made solemn and sacred commitments by adopting the Charter, the constitutive document of the United Nations. In accordance with Article 1 (3) of the Charter, one of the central purposes of the United Nations is:

"To achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."

The International Covenants on Human Rights also impose binding legal obligations to respect, and not undermine, the right of self-determination, providing in common article 1 (3):

"The States Parties to the present Covenant ... shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

Clearly, States are obliged to refrain from any action which undermines or violates the Charter of the United Nations. In regard to recognition of our status as "peoples" and our right to self-determination, we call upon the Commission on Human Rights and all States present at this session of the working group unequivocally to resist any attempts by individual States to contravene the purposes and principles of the Charter by proposing a distinction based on race or other prohibited grounds. In particular, by proposing to square bracket the term indigenous peoples, some States are seeking to open the door to developing double standards that are clearly discriminatory.

We continue to insist that the United Nations apply its own standards universally and equally, that it recognize and respect the same fundamental human right to self-determination for us as for other peoples in the world, that it act without prejudice and without discrimination. We cannot agree, now or at any future time when the Declaration might be considered, to any qualification, explanation, definition, bracketing or putting in parentheses or in a footnote the term indigenous peoples or peoples.

The term indigenous peoples is well established in international and national legal practice and has been consistently employed by the expert human rights treaty bodies of the United Nations itself. Finally, since the establishment by the Commission on Human Rights of the working group on the Declaration in 1995, numerous States have accepted the usage of the term indigenous peoples.

Indigenous representatives and some governmental delegations supported the current wording of articles 1, 2, 12, 14, 15, 16, 17, 18, 44 and 45. Those articles are reproduced below.

Article 1

Indigenous peoples have the right to the full and effective enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 2

Indigenous individuals and peoples are free and equal to all other individuals and peoples in dignity and rights, and have the right to be free from any kind of adverse discrimination, in particular that based on their indigenous origin or identity.

Article 12

Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature, as well as the right to the restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs.

Article 14

Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

States shall take effective measures, whenever any right of indigenous peoples may be threatened, to ensure this right is protected and also to ensure that they can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 15

Indigenous children have the right to all levels and forms of education of the State. All indigenous peoples also have this right and the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

Indigenous children living outside their communities have the right to be provided access to education in their own culture and language.

States shall take effective measures to provide appropriate resources for these purposes.

Article 16

Indigenous peoples have the right to have the dignity and diversity of their cultures, traditions, histories and aspirations appropriately reflected in all forms of education and public information.

States shall take effective measures, in consultation with the indigenous peoples concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all segments of society.

Article 17

Indigenous peoples have the right to establish their own media in their own languages. They also have the right to equal access to all forms of non-indigenous media.

States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity.

Article 18

Indigenous peoples have the right to enjoy fully all rights established under international labour law and national labour legislation.

Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour, employment or salary.

Article 44

Nothing in this Declaration may be construed as diminishing or extinguishing existing or future rights indigenous peoples may have or acquire.

Article 45

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.

Annex III

COMMENTS BY THE NON-GOVERNMENTAL ORGANIZATION MOVIMIENTO INDIO "TUPAJ AMARU"

As submitted at the fifth session of the working group:

Article 15

All indigenous peoples have a collective and individual right to compulsory, free, comprehensive and diversified education at all levels and in all forms of basic, middle and higher education in their own languages, including bilingual education. They are also entitled to formulate their own educational policies, to establish and control their educational systems and institutions and to manage and administer for themselves the resources assigned thereto, in accordance with standards and procedures established at the national level.

States recognize education as their highest function and agree to provide sufficient resources to promote it, with a view to achieving full development of the human personality, increased respect for human rights and maintenance of peace.

Article 16

Indigenous peoples have not only the right, but the duty, to ensure that the dignity and diversity of their age-old cultures, traditions, histories and aspirations are appropriately reflected in all forms of education and public and private information.

States shall take effective measures, with the full consent of the peoples concerned, to eliminate detrimental attitudes of superiority and racial discrimination and to promote tolerance, understanding and friendly relations between indigenous peoples and segments of the national community.

Article 17

Indigenous peoples have the right to establish their own media in their own languages, and the right of access to all forms of non-indigenous media, on an equal footing with other members of society.

Indigenous peoples also have full authority to set up their own radio and television broadcasting networks with a view to inculcating in indigenous society respect for human dignity and the duty to preserve its cultural identity and foster friendship and peace among indigenous nations.

States shall take effective measures to ensure that State-owned and private media objectively reflect indigenous cultural diversity and adequately guarantee the right to freedom of expression.

Article 18

Under the international conventions adopted by the ILO and pursuant to national labour legislation, indigenous peoples are fully entitled to employment, free choice of employment, satisfactory conditions of employment, medical care and social security, without distinction or discrimination on grounds of race or identity.

Indigenous workers are also entitled to equal pay for equal work, with no discrimination whatsoever.

Pursuant to their labour legislation, States shall take appropriate action to ensure the effective exercise of the labour rights referred to in this article. They shall, especially, provide legal protection for children against illegal exploitation and degrading forms of child labour that might have damaging consequences for their health, education and physical and mental development.

As submitted at the sixth session of the working group:

Article 1

Indigenous peoples have the right, individually and collectively, to the full and effective enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and contemporary international law, without any discrimination.

Any impediment to the free enjoyment of those rights shall be interpreted as an act contrary to the spirit and letter of international instruments.

Article 2

Indigenous individuals and peoples are born free and equal to all other peoples in dignity and rights and are endowed with reason and conscience in order to live in conditions of equality of rights and obligations.

No one shall be subjected to discrimination based on his or her indigenous identity, social origin, political opinion or any other status or be required to perform personal services of any kind without fair remuneration and without his or her full consent.

Article 12

Indigenous peoples have the right and moral duty to preserve, practise and revitalize their cultural and intellectual heritage in accordance with international law.

In accordance with this provision, aboriginal communities and indigenous peoples have the right to protect, safeguard and promote the constant development of past, present and future manifestations of their traditions, cultural values and artistic creations, such as archaeological

and historical sites, ceremonies, works of art, sculpture, musical instruments, artefacts, designs, scientific knowledge, traditional technologies and literature, which have a universal value in historical, aesthetic and anthropological terms.

New article (reparation and compensation)

In accordance with the procedures established by international rules indigenous peoples have the right to full restitution of and reparation for cultural, artistic, religious and spiritual property, including the mortal remains of their ancestors of which they have been deprived without their free consent and in violation of their customary law. Indigenous peoples have the right to fair compensation for material and moral damage caused by the war of conquest and colonization.

States shall agree to adopt appropriate measures to guarantee adequate protection of the cultural and intellectual heritage and compensation for the victims.

Article 14

Indigenous peoples have the right to revitalize, use, develop and transmit to present and future generations their own history, community values, philosophy, languages and writing systems and literatures and the right to retain and designate names for their original communities, pay tribute to the memory of their martyrs and respect their mythological sites.

States shall take effective measures, with the full consent of the peoples concerned, to ensure respect for and the protection of the sacred sites and rituals that form part of the common heritage of mankind.

Article 44

Nothing in this Declaration may be construed as diminishing or extinguishing existing fundamental rights that the indigenous peoples have or may acquire in future in accordance with new international instruments.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/2001/86
5 February 2001

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 16 of the provisional agenda

REPORT OF THE SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Report of Mrs. Iulia-Antoanella Motoc, Chairperson of the Sub-Commission at its fifty-second session, submitted in accordance with Commission decision 2000/106

Introduction

1. In its resolution 2000/83 of 26 April 2000, entitled "Work of the Sub-Commission on the Promotion and Protection of Human Rights", the Commission on Human Rights reaffirmed its recognition of the valuable contribution made by the Sub-Commission to the human rights work of the United Nations over the past 53 years and took note of the notes by the Chairperson of the Sub-Commission on enhancing the effectiveness of the Sub-Commission (E/CN.4/Sub.2/1998/38) and on the common position of the Sub-Commission on future tasks, length of sessions, working methods, composition and election of members (E/CN.4/Sub.2/1999/47), of the report of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission (E/CN.4/2000/112), in particular paragraphs 42 to 56, as well as of the statement made on 22 March 2000 by the Chairperson of the fifty-sixth session of the Commission under item 3 of its agenda.

2. In the same resolution, the Commission reaffirmed the need for clarification and adjustment of the mandate of the Sub-Commission as outlined in the report of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission. In accordance with the working group's recommendation, the Sub-Commission should continue to be able to debate country situations not being dealt with in the Commission.

It should also be allowed to discuss urgent matters involving serious violations of human rights in any country. However, the Sub-Commission should not adopt country-specific resolutions; its discussions would be reflected in the summary records of the debate which should continue to be forwarded to the Commission. The Working Group recommended that the Sub-Commission should refrain from negotiating and adopting thematic resolutions which contained references to specific countries.

3. The concern to safeguard the Sub-Commission's independence was a predominant theme in the Working Group's discussions. In its decision 2000/109 of 26 April 2000, the Commission emphasized that the independence of members was a defining characteristic of the Sub-Commission; to the extent that there was any perception that its independence was eroded, the credibility of the Sub-Commission and hence the influence that it could bring to bear on human rights issues was weakened.

4. In its decision 2000/109, the Commission endorsed the Working Group's recommendation that members of the Sub-Commission should continue to be elected according to the procedures currently in place. In the view of the Working Group, election of members was more transparent and democratic than appointment. Persons putting their candidacies to the Sub-Commission forward for membership and Governments in electing the membership should be conscious of the strong concern to ensure that the body was independent and was seen to be so. Members of the Sub-Commission should maintain the highest integrity and impartiality and avoid acts which would affect confidence in their independence. As regard the duration of membership, account should be taken of the need for a balanced accommodation of the benefits of continuity and the importance of renewal. As with the principle of independence discussed above, the Commission had emphasized that this should be borne in mind by persons putting their candidacies forward and by Governments in electing the membership. To ensure effectiveness, the size of the Sub-Commission should be kept to the minimum necessary. However, the Sub-Commission should have sufficient members to ensure that is was both geographically representative and also representative of different legal systems; there must also be a sufficient pool of experts to staff the Sub-Commission's working groups. Having weighed the various considerations, the Working Group recommended that the Sub-Commission should remain at its present size of 26 members.

5. In the same decision the Commission considered that its oversight and determination of priorities of the Sub-Commission should be strengthened. In assigning projects, the Commission should ensure that it gave clear direction to the Sub-Commission, taking care to avoid duplication with the work being carried out by other competent bodies and mechanisms.

6. The principal attention of the Sub-Commission should be given to the elaboration of studies and research and to providing expert advice to the Commission at its request. The Commission, in considering the assignment of work, should take into account relevant proposals from the Sub-Commission. In paragraph 8 of the annex to decision 2000/109, the Working Group envisaged a potential rule for the Sub-Commission in standard-setting. Before referring any matter to a working group, the Commission should, where the necessary groundwork has not otherwise been undertaken, consider requesting the Sub-Commission to undertake a study on the question at hand and to prepare a draft text which should include a comprehensive analysis, with substantive comments, of the instrument envisaged.

7. The Sub-Commission, recalling Commission on Human Rights resolutions 1999/81, 1998/28, 1997/22, 1996/25 and other previous resolutions on the work of the Sub-Commission pursuant to which a practice had developed whereby the Chairperson of the Sub-Commission submitted a written report and reported personally to the Commission on significant aspects of the work of the Sub-Commission, decided, without a vote, in the light of this long practice, to request the Chairperson of the Sub-Commission once again to submit a written report and to report personally to the Commission on Human Rights at its fifty-seventh session, with regard to significant aspects of the work of the Sub-Commission (decision 2000/106).

8. In accordance with that request, the Chairperson of the Sub-Commission submits the present concise report to the Commission. Further details regarding the various aspects of the work of the fifty-second session of the Sub-Commission will, if necessary, be provided in her statement to the Commission at its fifty-seventh session. The report of the Sub-Commission on its fifty-second session has been issued as document E/CN.4/2001/2-E/CN.4/Sub.2/2000/46.

I. STATEMENT BY THE CHAIRPERSON OF THE COMMISSION ON HUMAN RIGHTS AT ITS FIFTY-SIXTH SESSION

9. In paragraph 3 of resolution 2000/83, the Commission on Human Rights invited its Chairperson to address the Sub-Commission. Pursuant to this decision, the Sub-Commission invited the Chairperson of the Commission's fifty-sixth session, Mr. Shambhu Ram Simkhada, to take the floor on 31 July 2000.

10. Mr. Shambhu Ram Simkhada, Chairperson of the Commission, reaffirmed the important contribution being made by the Sub-Commission's work in the human rights field. At the same time, while paying tribute to the Sub-Commission's efforts to define its role and improve its methods of work, he reiterated the need to clarify and adjust the Sub-Commission's mandate.

11. The Chairperson referred to decision 2000/109 of 26 April 2000, by which the Commission had decided to approve in its entirety the report of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission. He emphasized that the Commission had endorsed the view that the Sub-Commission had made an important contribution to the work of the Commission thanks to the independence of its members - which was a basic characteristic of the Sub-Commission that guaranteed its credibility.

12. Lastly, he invited the Sub-Commission to discuss situations not being dealt with by the Commission, to examine urgent questions in any country and to concentrate on the preparation of reports and studies. He emphasized the need for a dialogue in greater depth between the Commission and the Sub-Commission, to avoid duplication and misunderstandings between the two bodies, which should pursue their fruitful cooperation with a view to the protection and promotion of human rights.

II. DECISIONS TAKEN BY THE SUB-COMMISSION CONCERNING ITS METHODS OF WORK

13. Pursuant to resolution 2000/83 of the Commission on Human Rights and the observations made on its behalf by its Chairperson, Mr. Shambhu Ram Simkhada, the Sub-Commission devoted a number of meetings to a discussion of its methods of work and ways of informing the Commission of its discussions on the subject of violations of human rights and fundamental freedoms.

14. To this end, on 14 August 2000, the Sub-Commission, with a view to the implementation of Commission decision 2000/109, in particular paragraph 52 of the annex, and in accordance with paragraph 2 of Commission resolution 8 (XXIII) of 16 March 1967, decided, without a vote, to include on an experimental basis in its report an extended and objective overview of its discussions on violations of human rights to be prepared by the Rapporteur of the Sub-Commission and circulated for the consideration of all members before its adoption.

15. During the Sub-Commission's discussions, certain members expressed the view that a report of that nature would not be in conformity with Commission decision 2000/109, since the idea of preparing an annex was not mooted in the Commission's proposal. Others considered that the Sub-Commission was competent to decide upon the structure of its report and could therefore decide to add an annex. According to one member of the Sub-Commission, the Commission itself had taken the view that it would be prejudicial to the cause of human rights if the Sub-Commission was unable to examine the human rights situation in certain countries.

16. The decision was modified by an oral decision of the Sub-Commission on 18 August 2000, at its final meeting at which the report was adopted. The Sub-Commission revised its decision, taking into account the limited time available to agree on the structure of the report and the fact that several members had considered that such a report would not be in conformity with Commission decision 2000/109. The Sub-Commission therefore decided not to submit the report but to request the Commission's advice as to how the Sub-Commission could best inform it of its deliberations on violations of human rights and fundamental freedoms in accordance with paragraph 2 of Commission resolution 8 (XXIII).

17. The Sub-Commission is undertaking this task by carrying out studies as well as through working groups and in the framework of its sessions, and also by the adoption of decisions. Three working groups met before the fifty-second session, namely, the Working Group on Minorities, the Working Group on Indigenous Populations and the Working Group on Contemporary Forms of Slavery. In accordance with Commission decision 2000/109, the Sub-Commission as a whole has ceased to have a role in the 1503 procedure and the Working Group on Communications met after the Sub-Commission's session.

18. In addition to the working groups mentioned above, the Sub-Commission established sessional working groups on the administration of justice and the activities of transnational corporations. In its resolution 2000/5, it proposed the establishment of a pre-sessional working group on the administration of justice.

19. In accordance with the Commission's request, the duration of the Sub-Commission's session was reduced to three weeks. The Sub-Commission held 28 meetings, corresponding to a total of 84 hours of work. The duration of discussions between experts was reduced considerably. The speaking time allotted to non-governmental organizations and government observers was also reduced. The Sub-Commission adopted 27 resolutions and 20 decisions in all. No statement by the Chairperson was adopted.

20. Pursuant to the Commission's request, the Sub-Commission avoided duplication with it. Consequently, it adopted only one resolution concerning violations of human rights and fundamental freedoms entitled "Human rights and humanitarian consequences of sanctions, including embargoes". The Sub-Commission also complied with the Commission's recommendation that it should refrain from adopting thematic resolutions containing references to specific countries.

III. REPORTS, STUDIES AND NEW SUBJECTS

21. In accordance with the conclusions of the Commission's Working Group endorsed by decision 2000/109, the principal attention of the Sub-Commission should be given to the elaboration of studies and research and to providing expert advice at the request of the Commission. The Commission, in considering the assignment of work, should take into account relevant proposals from the Sub-Commission. The Sub-Commission should retain some right of initiative in carrying out research and studies. However, such work at its own initiative should comprise a modest percentage of the Sub-Commission's work and should also take full account of the need to avoid duplication with work being undertaken by other competent bodies.

22. In acting on this recommendation, the Sub-Commission paid special attention to reports and studies. It took note with satisfaction of the working paper on the adverse consequences of economic sanctions. The Sub-Commission expressed its appreciation for the preliminary reports on the concept and practice of affirmative action and on globalization and its impact on the full enjoyment of human rights. The Sub-Commission requested the Special Rapporteurs to continue their studies on those subjects; the Special Rapporteurs on globalization and its impact on the full enjoyment of human rights were requested to include in their report the question of intellectual property rights and human rights. The Special Rapporteur on terrorism and human rights was requested to continue her study. The Sub-Commission also requested the Special Rapporteurs on traditional practices affecting the health of women and the girl child and on the indigenous peoples and their relationship to land to update their working papers. The Sub-Commission appointed a Special Rapporteur on the rights of non-citizens.

23. The Sub-Commission recommended that the Commission should entrust the following subjects to new special rapporteurs: the human rights problems and protections of the Roma; promotion of the realization of the right to drinking water and sanitation; human rights and human responsibilities; and reservations to human rights treaties. It should be noted that the special report on human rights and human responsibilities had been requested by the Commission in its resolution 2000/63.

24. Furthermore, the Sub-Commission entrusted a number of experts with the task of preparing working papers on the following subjects: discrimination based on work and descent;

and promotion and consolidation of democracy. The revision of certain working papers was proposed in the framework of the sessional working group on the working methods and activities of transnational corporations: consequences of the working methods and activities of transnational corporations, the responsibility of States and transnational corporations with regard to the violation of all human rights and standards on the human rights conduct of companies. An expert was entrusted with the task of preparing a working paper on procedures for the implementation of standards on the human rights conduct of companies. In the framework of the working group on the administration of justice, experts were requested to prepare working papers on the following subjects: the domestic implementation in practice of the obligation to provide domestic remedies, administration of justice through military tribunals and other exceptional jurisdictions, and discrimination in the criminal justice system. The Sub-Commission welcomed the practice of the Working Group on Minorities of requesting its members to prepare working papers.

IV. EVALUATION OF THE SUB-COMMISSION'S WORK AT ITS FIFTY-SECOND SESSION

25. At its fifty-second session, the Sub-Commission was required to implement Commission resolution 2000/83. It endeavoured to avoid duplication with the Commission, the analysis of situations being dealt with by the Commission and the adoption of resolutions on specific countries and to concentrate on the preparation of studies and research. Moreover, the Sub-Commission decided to request the Commission for additional clarification about the best way of informing it of its discussions on violations of human rights and fundamental freedoms.

26. It may be emphasized that the Sub-Commission maintained a rational agenda in view of the reduced duration of its session. It continued to accord importance to matters connected with racism, such as the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance by submitting to it two resolutions, one on migrant workers and the other on various problems which should be taken into account by the Conference, namely, slavery and racial discrimination, the impact of economic globalization on the question of racial equality, the treatment of non-citizens, affirmative action, minorities and indigenous peoples. It also took account of the preliminary report on affirmative action.

27. Emphasis was placed on the question of economic, social and cultural rights: a preliminary report on globalization and its impact on the full enjoyment of human rights was submitted by the Special Rapporteurs, and the question of intellectual property rights and human rights, namely, actual or potential conflicts between the implementation by the World Trade Organization of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the realization of human rights, was the subject of a Sub-Commission resolution. A detailed study was requested on the promotion of the realization of the right to drinking water and sanitation. One of the most important initiatives concerned the creation of a Social Forum, and the Commission was requested to hold a pre-sessional forum. The Sub-Commission suggested that the Commission should set up a working group to study an optional protocol to the International Covenant on Economic, Social and Cultural Rights. Particular attention should be paid to the rights of women: the mandate of the Special Rapporteur on traditional practices

affecting the health of women and the girl child was extended, and it was proposed that three seminars should be held to evaluate the Plan of Action for the Elimination of Harmful Traditional Practices.

28. Attention should also be drawn to the importance of the work of the inter-sessional working groups (Working Group on Contemporary Forms of Slavery, Working Group on Minorities and Working Group on Indigenous Populations) and the sessional working groups (Working Group on the Working Methods and Activities of Transnational Corporations and Working Group on the Administration of Justice). The larger number of studies, without financial implications, proposed in the framework of these working groups demonstrates the determination of the Sub-Commission's experts to concentrate on research work. The Special Rapporteur on indigenous peoples and their relationship to land was asked to update her working paper. The Sub-Commission noted with appreciation the important working paper on the human rights problems and protections of the Roma and proposed to the Commission a special report on the subject. Three experts of the Sub-Commission participated in a thematic discussion on the same subject organized by the Committee on the Elimination of Racial Discrimination. Greater importance was accorded to questions connected with the administration of justice. In this connection the Sub-Commission adopted a resolution on the role of universal or extraterritorial competence in preventive action against impunity. In view of the key role played by the administration of justice in ensuring respect for human rights, the Sub-Commission proposed to the Commission that the working group on this question should become a pre-sessional working group, meeting for two days.

29. The Sub-Commission embarked upon the process of adjusting and clarifying its mandate, as requested by the Commission. To this end, it adapted its agenda to avoid duplication with the Commission but at the same time continued to analyse human rights situations and concentrated on the preparation of studies and on research work. The Sub-Commission pursued its constructive dialogue with the Commission with a view to the more effective promotion and protection of human rights.